



PUBLIC NOTICE AND AGENDA
MTC Uniformity Committee Teleconference Meeting
Wednesday, June 22, 2005
3:30 Eastern Time

I. Welcome and Introductions

Wood Miller, Chair of the Income and Franchise Tax Subcommittee, welcomed everyone. The following participant in the call:

| Name | State or Affiliation |
|---------------------------------|------------------------------|
| Wood Miller, Chair Subcomm. | MO |
| Mike Brownell | CA |
| Andrea Chang | CA |
| Fred Camden-Craven | CA |
| Tom Butcher | FL |
| Robert Bavins | FL |
| Leonore Heavy | LA |
| Dan Safarien | MA |
| Janielle Lipscomb | OR |
| Paul Guthrie | OR |
| Gene Walborn | MT |
| Mary Loftsgard | ND |
| Gary Anderson | ND |
| Lily Crane | WI |
| Carol Held | WI |
| Frank Hales | UT |
| Kendal Houghton & Jeff Friedman | Sutherland, Asbill & Brennan |
| Ferdinand Hogroian | PWC |
| Eric Tresh | KPMG |
| MTC Staff and Consultants | |
| Shirley Sicilian | Elliott Dubin |
| Frank Katz | Walt Nagel |

II. Public Comment Period

None offered

III. Draft Model Telecommunications Apportionment Regulation:

A. Brief Review of Project Status

Shirley Sicilian noted the draft and the policy issues list.

B. Brief Review and Committee Discussion of Next Policy Issue: Definition of “Telecommunications” and “Telecommunications and Similar Services.” Materials:

1. [Policy Issue List](#)
2. [Definition in Current Draft Regulation](#) [See §(2)(ii) and (iii)]
3. Potential Use of SST Definition, Other [Existing Definitions](#)

Shirley gave an overview of differences between our draft and SST definition. She started with the basic definition and then discussed related and ancillary services. The basic definitions are similar. SST excludes much which we would want to include but only because SST needs separate definitions so that states can toggle on and off for individual activities that states may or may not tax.

Deborah Bierbaum noted that SST defines telecommunications as a transmission service and separates out other services, such as directory assistance.

Jeff Friedman asked about optional definitions that are more narrow than the very broad definition of “telecommunications” in SST. (Value added non-voice data services.) Shirley says they would be included, noting that this only is an apportionment rule, not the imposition of tax.

Deborah noted that some services are easy to identify and put on a market concept and some are not easy to identify and may need a different apportionment formula. Shirley responded that the services that aren’t included in the rule would be apportioned under the other rules.

Jeff couldn’t say whether having the same definitions as SSTP would be important. He understands the different uses of the definitions.

Mike Brownell said that a very broader rule may be simpler than narrow definitions.

Andrea Chang was confused as to why we were going through all the minute differences since we are going to want to apply the rule to a broad category of services.

Shirley asked if it is worth using the same basic telecom definition from SST and then adding the ancillary and related services.

Eric Tresh from KPMG asked whether there are guidelines to determine whether ancillary services are in or out.

Shirley noted that industry had asked that ancillary services be included so that bundled services billed to a customer will all be apportioned in the same way.

Kendall Houghton asked whether the goal is to sweep in every possible service as ancillary or just limit it to true telecommunication services. Shirley agreed that these issues need to be discussed, and pointed to them in the issues list. There are services bundled with telecommunications and services in competition with telecom.

Walt Nagel found the beauty of the SSTP approach is that it starts narrow and then allows various interests to have an opportunity to come in and discuss if they are to be included.

Deborah clarified the telecom industry comments fall into two buckets. One concern is that the definition, by calling it telecommunications and similar services is very misleading since companies didn't know it was impacting them since they don't think of themselves as telecom. Second comment is the industry does not know why telecom is being singled out, if we want to change cost of performance we should do that more generally.

Mike Brownell agreed that the title of the project should be sufficiently broad to put all included on notice (E.g., Telecommunications and information services)

Eric Tresh asked whether there is a baseline on how we got to telecommunications and what the problem was which would inform what is included in and excluded from ancillary services. Shirley referred Eric to the Policy Issues paper which discusses this in Roman I.

Shirley asked the committee for input on changes to the draft.

Mike Brownell said we do have an issue of scope. If we go broad we could use much broader definitions. If we are going to start narrow, it makes no sense to be close to but slightly different from SSTP.

Shirley asked if we do use the SSTP definition, which excluded services do we want to include as ancillary services.

Do we want to include ancillary services? Three way calling, billing services, directory assistance. Wood thinks we should include. Mike Brownell and Frank Hale agreed.

VoIP is included in the basic SST definition. We would continue to include it

Internet access service. We include as a related service. Do we want to continue including in the rule as a related service? Mike and Wood agree.

Data processing services. Walt described these services. This is the most problematic area. Data processors use telecommunications to provide their services. This has lots of content,

and similar to information services. So the recommendation is to not include this in scope as yet.

Installation of wiring on premises is now excluded. Current treatment would apportion to location of the customer. Sense of committee is that this service does not need to come under this special rule.

TTP not included.

Advertising is not included. (Yellow pages). Mike suggested proxy and a special apportionment rule for advertising. Deborah and Kendal find it odd that advertising would be included since many yellow pages are often done by non phone company. The decision was to include it as a “related service.”

Radio, TV. Walt explained that telecommunications can be used by radio and TV as a transmitter. Mike says the broadcasting regulation covers this. Deborah says that the charge that ATT makes to CNN for transmitting signals is considered telecom. Kendall and Eric will present on this in Boise. Mike suggests a relook at the broadcasting regulation to include activities that telecom might start transmitting content. The decision was to talk about it more in Boise.

C. Next Steps

Shirley will do another draft making only the changes discussed and have that for discussion in Boise.

IV. Other Business

Wood asked for an update on actions on proposals. Shirley reported on Executive Committee’s approval of the Combined Reporting proposal for a bylaw 7 survey and the Reportable Transactions proposal for public hearing. But there is more work for committee with regard to the Montana proposal for the addition of section requiring nexus disclosure. Public hearing set on the model add-back statute on July 18th in DC.

V. Adjourn